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DEPARTMENT OF AGRICULTURE

Rural Business-Cooperative Service

Rural Utilities Service

7 CFR Part 4279

RIN 0570-AA85

Guaranteed Loanmaking and Servicing Regulations; Correction

AGENCY: Rural Business-Cooperative Service and Rural Utilities Service, USDA.

ACTION: Correcting amendment.

SUMMARY: This document contains a correction to the final rule published in the Federal Register on June 3, 2016, entitled "Guaranteed Loanmaking and Servicing Regulations."

The Rural Business-Cooperative Service (Agency) is an agency within the Rural Development mission area of the United States Department of Agriculture (USDA) responsible for administering the Business and Industry (B&I) Guaranteed Loan Program. The B&I Guaranteed Loan Program is authorized by the Consolidated Farm and Rural Development Act and provides loan guarantees to banks and other approved lenders to finance private businesses located in rural areas.

DATES: Effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: David Chestnut, Rural Development, Business Programs, U.S. Department of Agriculture, 1400 Independence Avenue, SW, Stop 3224, Washington, DC, 20250-3224; email: david.chestnut@wdc.usda.gov; telephone number: (202) 401-0158.

SUPPLEMENTARY INFORMATION:

Need for Correction

On June 3, 2016, the Agency published a final rule for the Business and Industry (B&I) Guaranteed Loan Program (81 FR 35984). Since then, the Agency has discovered the need for a correction to the regulation regarding provisions relating to the New Markets Tax Credit (NMTC) program.

The preamble of the final rule publication noted that the rule has been expanded to include a lender's leveraged loan to accommodate the mechanics of the NMTC program. The Agency has received comments from many practitioners of the NMTC program that the Agency has incorrectly stated in § 4279.116(b) that a "sub-CDE" is the borrower in a leveraged equity transaction for the NMTC program. A NMTC sub-CDE is not a borrowing entity; it is a lending entity established for a single specific NMTC investment. The correct borrower in the mechanics of a leveraged equity NMTC transaction is an investor fund entity owned by a NMTC

investor and a leveraged lender, which has been established for a single specific NMTC project. The investor fund entity makes a qualified equity investment to the sub-CDE that in turn provides loans to an eligible business. To correct this error and accommodate the mechanics of a leveraged equity transaction within the NMTC program, the Agency is replacing the word "sub-CDE," with the words "investor fund entity" as it relates to an eligible borrowing entity.

List of Subjects in 7 CFR Part 4279

Loan programs - Business and Industry, Direct loan programs, Economic development, Energy, Energy efficiency improvements, Grant programs, Guaranteed loan programs, Renewable energy systems, Rural areas, and Rural development assistance.

Accordingly, 7 CFR part 4279 is amended by making the following correcting amendments:

PART 4279 - GUARANTEED LOANMAKING

1. The authority citation for part 4279 continues to read as follows:

Authority: 5 U.S.C. 301; and 7 U.S.C. 1989.

Subpart B - Business and Industry Loans

2. In § 4279.116, revise paragraphs (b) introductory text, (b) (1) (i) through (iii), (b) (2) through (4), and (b) (6), (8), (11), (12), and (13) to read as follows:

§ 4279.116 New Markets Tax Credit program.

* * * * *

(b) Loan guarantees for the leveraged lender. The provisions of § 4279.117(s) notwithstanding, an investor fund entity, such as an investor partnership or investor LLC, may be an eligible borrower as specified in paragraph (b) (1) of this section. Paragraphs (b) (2) through (13) of this section identify modifications to subpart B of this part that apply when the eligible borrower is an investor fund entity.

(1) * * *

(i) The investor fund entity must be established for a single specific NMTC investment;

(ii) The lender is not an affiliate of the investor fund entity;

(iii) One hundred percent of the guaranteed loan funds are or will be invested in one or more sub-CDEs that will then be loaned directly to a Qualified Active Low Income Community Business (QALICB), as defined by

applicable regulations of the Internal Revenue Service and are or will be used by the QALICB in accordance with §§ 4279.113 and 4279.117. All of the B&I guaranteed loan funds must be "passed through" the sub-CDE to the QALICB through a direct tracing method. The QALICB's project must be the ultimate use of the B&I guaranteed loan funds; and

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(2) The provisions of § 4279.119 apply except that the loan guarantee limits apply to the QALICB and not to the investor fund entity, who would otherwise be understood to be the "borrower."

(3) Section 4279.126 applies to both the borrower (investor fund entity) and the QALICB. The terms and payment schedule of the lender's loan to the investor fund entity must be at least equal to the terms and payment schedule of the sub-CDE's loan to the QALICB. An Agency approved unequal or escalating schedule of principal and interest payments may be used for a NMTC loan. The lender may require additional principal repayment by a co-borrower, such as an owner or principal of the QALICB. The lender or sub-CDE may require a debt repayment reserve fund or sinking fund; however, such fund is not in lieu of a principal repayment schedule in accordance with § 4279.126 as amended by this paragraph.

(4) Except for § 4279.131(b), § 4279.131 applies to both the lender's loan to the investor fund entity and the sub-CDE's loan to the QALICB. Section 4279.131(b) applies only to the sub-CDE's loan to the QALICB. Section 4279.116(a)(4) also applies when calculating tangible balance sheet equity.

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(6) Section 4279.137 applies to both the borrower (investor fund entity) and the QALICB.

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(8) Section 4279.161 applies to both the borrower (investor fund entity) and the QALICB. As part of the application completed by the lender in accordance with § 4279.161, the application documentation must include comparable information for the loan (using the B&I guaranteed loan funds) between the sub-CDE and QALICB. The requirements of § 4279.161 apply to the loan application, application analysis and underwriting, and loan documents between the sub-CDE and QALICB. The lender must include these materials in its guaranteed loan application to the Agency.

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(11) When complying with the planning and performing development provisions in § 4279.167, the lender is

responsible for ensuring that both the sub-CDE's loan to the QALICB and the QALICB's project comply with the provisions in § 4279.167.

(12) Section 4279.180 applies to both the borrower (investor fund entity) and the QALICB.

(13) Section 4279.181 applies to both the borrower (investor fund entity) and the QALICB.

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Dated: May 18, 2017.

Chad Parker
Acting Administrator
Rural Business-Cooperative Service

Dated: May 25, 2017.

Chris McLean
Acting Administrator
Rural Utilities Service

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